Filed 4/11/19 Marriage of Tearse CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of ANNE TEARSE and JAMES TEARSE.	
ANNE TEARSE, Appellant, v. JAMES TEARSE, Respondent.	A152355 (San Mateo County Super. Ct. No. FAM0122314)

MEMORANDUM OPINION[1]

This is a divorce proceeding in which Anne Tearse (Wife) appeals from an order dated July 3, 2017 (1) directing that a term life insurance policy naming James Tearse (Husband) as beneficiary "shall be reinstated," and (2) stating that "the cost of [a Family Code] section 730 expert shall be allocated equally between the parties."

Wife contends the trial court had no power to order her to reinstate term life insurance on her life naming Husband as beneficiary because any such policy would be Husband's separate property and "[t]here is no authority in the family court to order

[1] We resolve this case by memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1. (See also *People v. Garcia* (2002) 97 Cal.App.4th 847, 853–855.)

separated spouses, or any spouses, to buy anything that would be the other's separate property." Wife also argues that under circumstances where she objected to paying the expert and there was no evidence of how much the expert would cost or her ability to pay, it was an abuse of discretion to order equal allocation of this cost item. We reject her first argument on the merits and conclude that her second seeks review of a nonappealable collateral order.[2]

On the life insurance issue, the policy at issue predated the couple's separation, and Wife let it lapse despite Husband's offer to advance funds to reinstate it. Husband filed a Request for Order (RFO) "requiring cooperation in reinstatement of life insurance." By letting the policy lapse, Husband argued, Wife effectively disposed of property subject to the Automatic Temporary Restraining Order (ATRO). We think the court correctly granted the RFO as a remedy for violation of the ATRO. (Fam. Code, § 233.)

Wife insists that, post-separation, her choice of how to handle a term life insurance policy property with zero cash value was not within the court's power to control. We do not agree. The community has an insurable interest in Wife's life that qualifies as property. (Ins. Code, § 10110.1, subds. (a) & (b).) During the pendency of this litigation, the ATRO protected the continued existence of that interest so that she would not have to qualify for new insurance at *potentially* higher cost to the community. While any damage caused by lapse or extinguishment of life insurance may be clearer with whole life insurance (see *Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 863–864), the same principle of property law applies to a term policy. We emphasize that the court order here required of Wife only that she cooperate in having the policy reinstated, not that she pay any portion of the premiums.

[2] Wife filed four notices of appeal in this docket purporting to appeal orders dated, respectively, July 3, 2017, July 7, 2017, July 11, 2017, and July 19, 2017. Because her opening brief fails to address the latter three orders, she has waived her appeal of them and we treat the appeal as an attack solely on the July 3 order.

Citing cases addressing whether a term life insurance policy is properly characterized as community property or separate property (*In re Marriage of Burwell* (2013) 221 Cal.App.4th 1; *Estate of Logan* (1987) 191 Cal.App.3d 319), Wife argues that the court overlooked the critical threshold issue of characterization. The ATRO covers "any" property, not just community property. (Fam. Code, § 2040, subd. (a)(2).) Because the ATRO was designed to preserve the status quo until issues of property characterization and division could be addressed, for purposes of enforcing the ATRO it is beside the point whether the right at issue was properly characterized as separate property or community property.[3]

On the cost allocation issue, the court ordered Husband to advance 100% of the expert's cost, thus addressing the issue of ability-to-pay by deferring any financial burden facing Wife until property division, while announcing its "intent" to make a 50/50 allocation at the property division stage. That amounts to a tentative ruling on the issue of allocation, with no immediate effect on Wife. We agree with Husband that it is a collateral order not subject to appeal at this time. (See *In re Marriage of Van Sickle* (1977) 68 Cal.App.3d 728, 736–737.) Any review must await a final order on property division.

DISPOSITION

We affirm the court's July 3, 2017 order insofar as it granted Husband's RFO. We decline to reach the allocation of expert costs issue Wife presents and dismiss that aspect of the appeal as unripe. Respondent to recover costs.

[3] Wife argues for the first time in her reply brief that "[a]n order requiring [her] to buy a policy to which [Husband] would be a beneficiary violates Article 1 Section 1 of the California Constitution[.]" We will not entertain arguments raised for the first time in reply. (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 295, fn. 11 [for "[o]bvious reasons of fairness," declining to consider issue raised by appellant for first time in reply brief].)

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Streeter, Acting P.J.

We concur:

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Tucher, J.

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Brown, J.